IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SEVENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

HON'BLE SRI JUSTICE B.PRAKASH RAO

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WRIT PETITION NO : 6567 of 1997

Between:

M.A. Yousuf Sharief, s/o. Yesin Sharieff, aged about 57 years, R/o. Hyderabad.

..... PETITIONER

AND

1. Chief Engineer, APSEB, Mint Compound, Hyderabad Zone, Hyderabad,
2. Divisional Engineer Operations, APSEB, Sangareddy.
3. Member Secretary, APSEB, Vidyut Soudha, Somajiguda, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of mandamus or any other appropriate writ, direction or directions, declaring the action of the respondents in not paying the legitimate dues to the petitioner as arbitrary and unreasonable, and to issue consequential direction to the respondents to pay to the petitioner Gratuity, full salary for the period of suspension from 14-5-1991 to 13-3-1996 and also to pay interest on the above mentioned amounts from the date they became due till the date of realisation.

Counsel for the Petitioner: MR.V.SRINIVAS

Counsel for the Respondents.: MR.S.RAVINDRANATH , S.C for APSEB

The Court made the following :

ORDER:

The petitioner, who was an employee with the respondents, files this writ petition, inter alia, seeking a direction by way of this writ petition to the respondents herein for payment gratuity and full salary due to him during the period of suspension i.e., from 14-5-1991 to 13-3-1996 along with interest.

The case of the petitioner, in brief, is that on certain allegations the petitioner was kept under suspension and ultimately he was dismissed from service by an order dated 14-5-1991 which was challenged in W.P.No. 7492 of 1991. The said writ petition was allowed and it was left open to first respondent to proceed with the enquiry. After enquiry, the first respondent placed the petitioner under suspension by an order dated 29-6-1996 from 14-5-1991 to 13-3-1996. Therefore, for the period from 14-5-1991 to 13-3-1996, he is entitled to suspension allowance on the basis of the revised pay scales but not on the existing pay scales as given to him and further even the gratuity amount to which he is entitled to under the provisions of payment of Gratuity Act, 1972 has not been given to him. Hence, the writ petition.

In the counter affidavit filed by the respondents herein it is stated that having regard to the provisions of the A.P. Revised Pension Rules, 1980, the petitioner who is a removed employee, will not get any relief and further, if at all there is any amount due to the petitioner on the basis of the revised pay scales, the petitioner can approach the respondents and the same can be considered by it. However, in so far as the gratuity is concerned, by virtue of exemption under section 5 of the Payment of Gratuity Act provided to the respondents, they are not liable to make any payment and further by reading together the Pension Rules and also the Exemption under the Payment of Gratuity Act, the entire service has to be taken up and thus no gratuity becomes due to the petitioner.

Heard the Counsel on either side.

Having considered the submissions made on either side and also on perusal of the

material, it is seen that in this writ petition ultimately the petitioner seeks two reliefs i.e., one for payment of subsistence allowance on the basis of the revised pay scales and another for payment of Gratuity. In regard to the revised pay scales is concerned, the learned counsel for the respondents fairly submits that if at all any such variation in regard to the calculations made to which the petitioner would be entitled to in the revised pay scales, the same can be considered afresh on an application to be filed by the petitioner. In view of the same, it is observed that it is open for the petitioner to approach the respondents by filing an application giving all the calculations and the amount to which he is entitled to and on receipt of the same, it can be considered and disposed off by the respondents in accordance with law.

Coming to the second aspect i.e., entitlement of the Gratuity, no doubt, it is stated that the respondents are not liable for any payment towards gratuity. However, in the counter affidavit no reference has been made to the proceedings exempting the respondent company from the provisions of the payment of Gratuity Act. It is stated, across the bar, that in exercise of the powers under Section 5 of Payment of Gratuity Act the State Government issued G.O.No. 51 dated 18-12-1995 exempting all the employees of the Board from all the provisions of the said Act and the Rules made there under. Since the same is not made part of the pleadings and further it also requires consideration as to the applicability, it is felt that the same can be agitated in separate proceedings rather than in this writ petition.

Therefore, leaving it open to the petitioner to challenge the said exemption order or even in regard to the applicability to the petitioner and other employees, the writ petition is disposed of. No costs.

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B. PRAKASH RAO, J

Dt. 27/12/2004

Kvrk

To

1. The Chief Engineer, APSEB, Mint Compound, Hyderabad Zone, Hyderabad,
2. The Divisional Engineer Operations, APSEB, Sangareddy.
3. The Member Secretary, APSEB, Vidyut Soudha, Somajiguda, Hyderabad.
4. Two CD copies.